

STATE HISTORICAL
SOCIETY OF IOWA
IOWA DEPARTMENT OF CULTURAL AFFAIRS

The Annals of Iowa

Volume 79 | Number 1 (Winter 2020)

pps. 102-104

Prohibition, The Constitution, and States' Rights

Thomas R. Pegram
Loyola University Maryland

ISSN 0003-4827

Copyright © 2020 State Historical Society of Iowa. This article is posted here for personal use, not for redistribution.

Recommended Citation

Pegram, Thomas R.. "Prohibition, The Constitution, and States' Rights." *The Annals of Iowa* 79 (2020), 102-104.

Available at: <https://doi.org/10.17077/0003-4827.12651>

Hosted by [Iowa Research Online](#)

race as a whole. Similarly, after citing just two examples of midwestern schools banning the teaching of German, Smith claims that fear of the German imperial government's infiltration into the American public school system was widespread throughout the Midwest (80).

This claim opens the door for more localized research. Smith's work provides a broad view of the fears and insecurities fueling wartime anti-Germanism. Yet does this hold true, for example, for the average Iowa farmer at the time? Did he worry about the weakening manhood of the Anglo-Saxon race? And what about states like Minnesota, a state with one of the highest percentages of German Americans in the nation? Are these fears and insecurities at play in a region where so many claimed German heritage? Smith's contribution to the discussion is a valuable one — and one that will likely prompt additional questions and studies.

Smith states in his introduction that he hopes "readers can see a bit of their own time in the pages that follow" (15). In fact, the similarities between the war years and the present were clear and impossible to ignore. It was hardly necessary for the author to point out in the epilogue that "Americans' perception of the foreign Other as an agent of anti-democratic conspiracy and a threat to their way of life has not changed significantly since the Great War" (179). Sadly, for all that has changed in 100 years, the book is a sobering reminder of lessons we have not yet learned.

Prohibition, The Constitution, and States' Rights, by Sean Beienburg. Chicago: University of Chicago Press, 2019. xi, 322 pp. Table, maps, notes, index. \$105 hardcover, \$35 paperback.

Reviewer Thomas R. Pegram is professor of history at Loyola University Maryland. He is the author of *Battling Demon Rum: The Struggle for a Dry America, 1800–1933* (1998).

Sean Beienburg is a political scientist and constitutional scholar with an interest in reviving federalist assertiveness by states against centralized national authority. He sees the Prohibition era as an especially fruitful instance of what he calls extrajudicial constitutional interpretation. During Prohibition, meaningful constitutional debates moved beyond the courts and took place between wet and dry elected officials in state governments. Legislative attempts between 1918 and 1933 to protect state freedoms under the U.S. Constitution form the core of *Prohibition: The Constitution, and States' Rights*.

Beienburg establishes that a broadly shared constitutional outlook framed the debate over the Eighteenth Amendment. Aside from a few nationalists and nullificationists, wets and dries alike professed a belief in constitutional federalism. Prohibitionists stressed the necessity of a

constitutional amendment to introduce expanded national police power for the specific purpose of eliminating the dangerous liquor industry. For their part, antiprohibitionists did not contest the exercise of national authority in enforcing Prohibition but rather insisted that the states had the right to determine the nature and extent of the vaguely defined concurrent state enforcement mandated by the Eighteenth Amendment. Additional factors moved the center of debate to state governments. The U.S. Supreme Court's decision in the 1920 National Prohibition Cases confirmed the constitutionality of the Eighteenth Amendment and its enforcement legislation, the Volstead Act. That left the states to struggle with their role in concurrent enforcement. The strategy of the chief interest group behind prohibition, the Anti-Saloon League (ASL), further reinforced the critical role of state governments. Seeking to maintain pressure on individual lawmakers, the ASL downplayed Prohibition as a partisan issue. Happy to escape the necessity of declaring firm positions on a divisive question that cut across party lines, political parties mostly refrained from taking firm positions on Prohibition. That allowed legislative debates on enforcement policies to operate relatively free from party constraints, although not from ASL watchfulness.

Pushed by the courts and the ASL, states constructed enforcement statutes; among those states were three that had not yet ratified the Eighteenth Amendment (Rhode Island, Connecticut, and New Jersey). Only Maryland refused to pass a state enforcement law, arguing that the Eighteenth Amendment merely empowered the state to carry out concurrent enforcement and left it to state authorities to determine how or even whether to act on that power. A few states attempted to redefine Volstead's stringent standard marking "intoxicating" beverages to allow for the use of low-alcohol beer and light wines. During the early to mid-1920s, a handful of additional states repealed their state enforcement acts and left Prohibition enforcement to federal officials. Critics, including many constitutionally cautious wets, denounced such acts as nullification. The more common position, according to Beienburg, was Prohibition legalism.

As popular dissatisfaction with Prohibition grew over the dry decade, most governors of restive states, even the wets, asserted that states could not refuse to enforce Prohibition but rather should push for constitutional revision. Legislatures sent memorials to Congress advocating adjustment or repeal of the Eighteenth Amendment. Led by western states, popular referenda called for constitutional change and, later in the decade, repeal of state enforcement laws. The Association Against the Prohibition Amendment, the leading antiprohibition action group, further popularized the use of popular referenda to turn public opinion into constitu-

tional revision. By 1932, a wave of popular pressure—combined with the Hoover Administration’s enactment of harsh federal penalties for violators of an increasingly inept enforcement regime, the infiltration of prohibition into partisan politics, and the impact of the depression—led to the collapse of state enforcement laws in the Northeast. State conventions, usually elected by popular vote, sped the ratification of the Twenty-first Amendment, ending national Prohibition. According to Beienburg, constitutionally conscious antiprohibitionists found a way to assert states’ rights and popular will within a legal framework. He hopes their actions will become a model for contemporary movements harnessing popular constitutionalism.

Beienburg’s reconstruction of state-level efforts to balance states’ rights and national authority will influence future Prohibition research. The sharp constitutional focus and present-mindedness of Beienburg’s study may prove less satisfying to historians. Beienburg examined state legislative journals and newspapers to construct his complicated timeline of legislative debates, but they could be more clearly rendered. Minimal social and political context frames the analysis of debates. Beienburg largely overlooks deficiencies in state enforcement that sometimes predated legislative discussions. The Great Depression probably was more central to Prohibition’s collapse than Beienburg admits. Despite the referenda, popular voices are distant. Legal historians and constitutional scholars have much to gain from Beienburg’s study. Prohibition historians will consult it, but with care.

Remembrance of Things Present: The Invention of the Time Capsule, by Nick Yablon. Chicago: University of Chicago Press, 2019. 407 pp. Illustrations, notes, index. \$45 hardcover.

Reviewer Benjamin Filene is chief curator at the North Carolina Museum of History. In 1995 he curated *Time Capsules: History Goes Underground*, an exhibition at the Outagamie County Historical Society in Appleton, Wisconsin.

Cultural history can help us glimpse how people from the past saw their world. In *Remembrance of Things Present: The Invention of the Time Capsule*, Nick Yablon achieves this goal in a way that would likely appeal to the eccentric, earnest assemblage of hoarders, hucksters, and visionaries he profiles: he takes seriously the messages they aspired to send to the future, the forces that shaped those aspirations, and their efforts—sometimes successful, sometimes spectacularly short-circuited—to transmit material-culture missives forward in time. In doing so, Yablon takes readers on a wild ride that offers new insights into how